

FILED '09 FEB 09 13:46 USC-ORH

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

PETER T. HARRELL,	)	Civil No. 08-3037-CL
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
v.	)	
	)	
SOUTHERN OREGON UNIVERSITY,	)	
MARY CULLINAN, CASEY CLITHERO,	)	
JANAY HASS, LORE RUTZ-BURRI,	)	
and JOHN DOES 1-20,	)	
	)	
Defendants.	)	

**PANNER, Judge.**

On December 11, 2008, Magistrate Judge Clarke filed his Report and Recommendation, which recommends dismissing certain claims. Plaintiff timely objected. The matter is now before me for *de novo* review pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

States are not "persons" subject to liability under 42 U.S.C. § 1983. Will v. Michigan Dep't of State Police, 491 U.S. 58, 65, 73 (1989). The conclusion that Southern Oregon University is an "arm of the state" therefore is dispositive of Plaintiff's § 1983 claims against the University. With that small modification, I adopt the Magistrate Judge's well-reasoned Report and Recommendation.

### Conclusion

Magistrate Judge Clarke's Report and Recommendation (docket # 35) are adopted. Defendants' motion (# 29) to dismiss certain claims is granted. Plaintiff's state law claims against Southern Oregon University are dismissed without prejudice, pursuant to the Eleventh Amendment to the United States Constitution.

Any state law claims against the individual defendants are premised on events occurring within the scope of employment with the University, and may be asserted (if at all) only against the State pursuant to the Oregon Tort Claims Act, ORS 30.265 and 30.275. The State having timely asserted its Eleventh Amendment privilege, and no showing having been made of waiver or abrogation of such right as to the matters at issue, those state law claims may not be heard in federal court and are dismissed without prejudice.

Plaintiff's 42 U.S.C. § 1983 claim against Southern Oregon University is dismissed with prejudice for failure to state a claim. A state is not a "person" within the meaning of § 1983.

Plaintiff's claims under 42 U.S.C. § 1985 and § 1986 are dismissed with prejudice for failure to state a claim.

Plaintiff's prayer for attorney fees under 42 U.S.C. § 1988 is inapposite. No attorney has yet appeared on Plaintiff's behalf in this matter.

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What remains in this action are the § 1983 claims for damages against the defendants in their individual capacities.

IT IS SO ORDERED.

DATED this 9 day of February, 2009.

A handwritten signature in cursive script, reading "Owen M. Panner", written over a horizontal line.

Owen M. Panner  
United States District Judge